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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 388

LOUISE A. CHISHOLM, Individually and as Administratrix of the Estate of Susie A. Hightower, WESLEY G. ANDERSON, and MARIE ANDERSON,

Petitioners,

vs.

DR. R. A. BILLINGS, Co-executor and Trustee under the Will of Dr. George L. Hightower, MISS MOLLIE MYRICK, Individually and as Co-executrix under the Will of Dr. George L. Hightower, REV. A. A. HIGHTOWER, Individually and as Trustee under the Will of Dr. George L. Hightower, MORRIS BROWN COLLEGE, a Georgia Corporation, THE HOWARD UNIVERSITY, a District of Columbia Corporation, COSMOPOLITAN A.M.E. CHURCH, an Unincorporated Association, PHI BETA SIGMA FRATERNITY, INC., a New York Corporation, ZETA CHAPTER OF PHI BETA SIGMA FRATERNITY, an Unincorporated Association, CHI CHAPTER OF PHI BETA SIGMA FRATERNITY, an Unincorporated Association, PSI CHAPTER OF PHI BETA SIGMA FRATERNITY, an Unincorporated Association, and LAMBDA SIGMA CHAPTER OF PHI BETA SIGMA FRATERNITY, an Unincorporated Association,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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INDEX

Petition for a Writ of Certiorari to the Supreme Court of Georgia 1
Appendix A, Trial Court's Order of June 16, 1964 ..... A1
Appendix B, Trial Court's Order of November 3, 1964 .. A4
Appendix C, Opinion of Supreme Court of Georgia dated April 12, 1965 ..... A5
Appendix D, Constitutional Provisions and Statutes .. A9
Certificate of Service A15

TABLE OF CASES

Beynes v. *Brooks*, 219 Ga. 140, 132 S.E.2d 42 (1963) 4
Chessman v. *Teets*, 354 U.S. 156, 77 S.Ct. 1127, 1 L.Ed. 2d 1253 (1957) 2
Dowd v. *United States ex rel. Cook*, 340 U.S. 206, 71 S.Ct. 262, 95 L.Ed. 215 (1951)) 2
Griffin v. *People of the State of Illinois*, 351 U.S. 12, 18, 100 L.Ed. 907, 76 S.Ct. 598 2
Kelley v. *Welborn*, 110 Ga. 540, 35 S.E. 636 (1900) 4
Kine v. *Becker*, 82 Ga. 563, 9 S.E. 828 (1889) 4
Reynolds v. *Bristow & Kent*, 37 Ga. 283 (1867) 4
Trustees of the University of George v. *Denmark*, 141 Ga. 390, 81 S.E. 238 (1913) 4
Wesley Memorial Hospital v. *Thompson*, 164 Ga. 466, 139 S.E. 15 (1927) 4

CONSTITUTIONS AND STATUTES

Constitution of the State of Georgia of 1945, Article VI, Paragraph IV (Georgia Code §2-3704) 2
Constitution of the United States, Fourteenth Amendment 2, 6
Georgia Code §6-701 3
Georgia Code §6-801 2
Georgia Code §6-901 2
Georgia Code §6-1607 3
Georgia Code §113-107 ..... 3, 4

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

The opinion of the Supreme Court of Georgia in *Chisholm, Administratrix, et al.* v. *Billings, Executor, et al.*,

case No. 22859 in the Supreme Court of Georgia, has not yet been reported. Said opinion is set out in Appendix C. The decision of the Supreme Court of Georgia was rendered on April 12, 1965 and the Petitioners' Motion for Rehearing was denied on May 6, 1965.

This Court has jurisdiction to review the present case by Writ of Certiorari as provided in 28 U.S.C. §1257. The question presented for review is whether the erroneous denial and limitation of discovery by the trial court in its order of June 16, 1964 and the subsequent erroneous refusal of the Supreme Court of Georgia to review and pass on the assignment of error relating to the denial and limitation of discovery deprived the Petitioners of their right of appeal under the Constitution and statutes of the State of Georgia in violation of the equal protection clause and due process clause of the Fourteenth Amendment of the Constitution of the United States. The Petitioners submit that the refusal of the Supreme Court of Georgia to review and rule on the assignment of error relating to discovery deprived them of their right of equal protection as to the right of appeal and deprived them of their property without due process in violation of the Fourteenth Amendment. *Dowd* v. *United States ex rel: Cook*, 340 U.S. 206, 71 S.Ct. 262, 95 L.Ed. 215 (1951); *Chessman* v. *Teets*, 354 U.S. 156, 77 S.Ct. 1127, 1 L.Ed.2d 1253 (1957); *Griffin* v. *People of the State of Illinois*, 351 U.S. 12, 18, 100 L.Ed. 907, 76 S.Ct. 598.

In Paragraph IV, Article VI, of the *Constitution of Georgia of 1945* (*Georgia Code* §2-3704) the Supreme Court of Georgia is designated as a Court "... for the trial and correction of errors of law from the superior courts ... in all equity cases; in all cases which involve the validity of or the construction of wills..." An appeal by bill of exceptions is provided by *Georgia Code* §§6-901 and 6-801. The duty of the Supreme Court to rule on the assignments of error in

the bill of exceptions is set out in *Georgia Code* §§6-701 and 6-1607. In *Georgia Code* §6-1607 it is expressly provided that the appellate court shall decide any question made by assignment of error.

By refusing to rule upon the assignment of error as to the denial of discovery, the Supreme Court of Georgia deprived the Petitioners of their right to appeal as afforded by the above-cited constitutional and statutory provisions. The erroneous ruling of the trial court denying and limiting discovery on June 16, 1964 affected the final result of the case in that it proximately caused the sustaining of a general demurrer by the trial court and an affirmance by the appellate court on the ground that the amount of the assets in the estate of Dr. George L. Hightower were not alleged. The orders of the trial court of June 16, 1964 and November 3, 1964 are set out as Appendices A and B and the opinion and judgment of the Supreme Court of Georgia is set out as Appendix C.

The present case arises out of a will containing devises to educational, religious and charitable institutions that are void under *Georgia Code* §113-107. The will is that of Dr. George L. Hightower, who died on March 8, 1963, leaving a will dated December 19, 1962 and a codicil dated January 11, 1963. The will left more than one-third of Dr. Hightower's estate to educational, religious and charitable institutions and the will and codicil had been executed less than ninety days before his death. Dr. Hightower's wife, Mrs. Susie A. Hightower, survived him, and therefore the devises to the educational, religious and charitable institutions were void under *Georgia Code* §113-107.

Thirty-nine days after her husband's death, Mrs. Susie A. Hightower died intestate, leaving Petitioners Louise